

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:98-CR-64-SDJ
	§	
GERALD WOOTEN (6)	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Gerald Wooten's Motion for Release to Detention Based on the COVID-19 Pandemic, (Dkt. #530). Wooten also filed two separate Amendments to Motion for Reduction of Sentence/Compassionate Release, (Dkts. #536 and #538). The Government filed a response in opposition, (Dkt. #547), to which Wooten filed a reply, (Dkt. #554). Wooten then filed an Addendum of Information for the Court to Consider in Relation to Movant's Motion to Reduce Sentence under 18 U.S.C. § 3582(c)(1)(A)(i), (Dkt. #556), as well as an additional letter to the Court, (Dkt. #558). The Court, having considered the motion, the subsequent briefing, and the applicable law, **DENIES** the motion.

I. BACKGROUND

Wooten is currently serving a 360-month term of imprisonment at FCI Oakdale I, with an anticipated release date of July 19, 2024. On May 21, 1999, Wooten was found guilty by a jury on two counts: conspiracy to possess with the intent to distribute cocaine, in violation of 21 U.S.C. § 846, and money laundering conspiracy, in violation of 18 U.S.C. § 1956(a)(1). At the time the Government filed its response, Wooten had served approximately 276 months of his sentence and had credit for good

conduct time of approximately 37 months, for total time served of approximately 313 months. Citing risks to his health associated with the COVID-19 pandemic and his pre-existing medical conditions, as well as a change in law regarding the definition of career criminal and his rehabilitation in prison, Wooten requests that the Court reduce his sentence to time served and order him released from prison, relying on 18 U.S.C. § 3582(c)(1)(A).

II. DISCUSSION

A. 18 U.S.C. § 3582(c)(1)(A)

A judgment of conviction imposing a sentence of imprisonment “constitutes a final judgment’ and may not be modified by a district court except in limited circumstances.” *Dillon v. United States*, 560 U.S. 817, 824, 130 S.Ct. 2683, 177 L.Ed.2d 271 (2010) (quoting 18 U.S.C. § 3582(b)); *see also* 18 U.S.C. § 3582(c). One such circumstance arises from 18 U.S.C. § 3582(c)(1)(A)(i), commonly referred to as compassionate release.

Section 3582(c) was enacted as part of the Sentencing Reform Act of 1984. Under the first iteration of the relevant provision, district courts were authorized to grant sentence reductions on the motion of the Director of the Bureau of Prisons (“BOP”) if the BOP could establish the following conditions: (1) extraordinary and compelling reasons warranted a sentence reduction; (2) a reduction would be consistent with the applicable policy statements of the Sentencing Commission; and (3) a sentence reduction was warranted after consideration of the sentencing factors in 18 U.S.C. § 3553(a). *United States v. Shkambi*, 993 F.3d 388, 391 (5th Cir. 2021).

Notably, Congress did not define “extraordinary and compelling reasons” or otherwise indicate how that phrase should be interpreted other than to specify that rehabilitation alone did not qualify. *Id.* (quoting 28 U.S.C. § 994(t)). Instead, Congress delegated that authority to the Sentencing Commission, directing it to “describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.” 28 U.S.C. § 994(t).

The Sentencing Commission eventually followed Congress’s direction to define “extraordinary and compelling reasons” and promulgated U.S.S.G. § 1B1.13. In application note 1 to Section 1B1.13, the Sentencing Commission described what circumstances constitute “extraordinary and compelling reasons” for purposes of Section 3582(c)(1)(A)(i). U.S.S.G. § 1B1.13 cmt. n.1. The Sentencing Commission essentially created four categories of “extraordinary and compelling reasons,” which can broadly be characterized as: (1) circumstances arising from certain medical conditions; (2) circumstances arising from the age of the defendant; (3) issues arising from the defendant’s family circumstances; and (4) other reasons that the BOP agrees are extraordinary and compelling in a specific case. *Id.* And because Section 3582(c)(1)(A) requires that any sentence reduction be consistent with the Sentencing Commission’s policy statements issued pursuant to Section 994(t), the policy statements contained in Section 1B1.13 were binding on district courts considering Section 3582(c)(1)(A)(i) motions. *See United States v. Garcia*, 655 F.3d 426, 435 (5th Cir. 2011) (holding that the Sentencing Commission’s policy statements

issued pursuant to 28 U.S.C. § 994 are binding on district courts when considering motions brought under 18 U.S.C. § 3582(c)).

In 2018, Congress amended Section 3582(c)(1)(A) with the passage of the First Step Act. The amendment provided that, in cases where the BOP does not file a compassionate-release motion on the prisoner's behalf, the prisoner may personally file a motion for compassionate release. *Shkambi*, 993 F.3d at 391–92. This was the First Step Act's only change to the compassionate-release framework. *Id.* at 391. Thus, while prisoners, in addition to the BOP, may now file motions for compassionate release, Section 3582(c)(1)(A)(i)'s substantive requirements that govern a prisoner's entitlement to release remain the same. *See id.* at 392 (“But the [First Step Act] left undisturbed the other three § 3582 requirements.”).

Following the First Step Act's expansion of who may file a motion under Section 3582(c)(1)(A), courts were confronted with the question of whether the Sentencing Commission's definition of “extraordinary and compelling reasons,” which was promulgated prior to the First Step Act when such motions could only be filed by the BOP, remained binding on district courts when considering compassionate-release motions. The Fifth Circuit addressed this question in *Shkambi*, holding that, while U.S.S.G. § 1B1.13 is a policy statement applicable to Section 3582(c)(1)(A) motions filed by the BOP, it is inapplicable to Section 3582(c)(1)(A) motions filed by prisoners. 993 F.3d at 392.¹ Accordingly, while U.S.S.G. § 1B1.13 dictates the

¹ Several other circuits have similarly concluded that U.S.S.G. § 1B1.13 is inapplicable to such compassionate-release motions filed by prisoners. *See, e.g., United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021) (per curiam); *United States v. McCoy*, 981 F.3d 271, 281 (4th Cir. 2020); *United States v. Brooker*, 976 F.3d 228, 230 (2d Cir. 2020). *But see United*

meaning of “extraordinary and compelling reasons” when a Section 3582(c)(1)(A) motion is filed by the BOP on a prisoner’s behalf, it does not do so when, as here, a Section 3582(c)(1)(A) motion is filed by a prisoner himself. *See id.* (“[T]he policy statement continues to govern where it says it governs—on the motion of the Director of the Bureau of Prisons. But it does not govern here—on the newly authorized motion of a prisoner.” (quotation omitted)). Therefore, when a prisoner files a compassionate-release motion, courts must determine what constitutes an “extraordinary and compelling reason” under Section 3582(c)(1)(A)(i).

B. Extraordinary and Compelling Reasons

Though the Court is not bound by the Sentencing Commission’s policy statement in U.S.S.G. § 1B1.13 and its accompanying application notes when considering compassionate-release motions filed by prisoners, the policy statement is not wholly irrelevant. Courts should still look to the policy statement for guidance in determining what constitute “extraordinary and compelling reasons” for a sentence reduction when a prisoner files a compassionate-release motion. *See United States v. Thompson*, 984 F.3d 431, 433 (5th Cir. 2021) (“Although not dispositive, the commentary to the United States Sentencing Guidelines (‘U.S.S.G.’) § 1B1.13 informs our analysis as to what reasons may be sufficiently ‘extraordinary and compelling’ to merit compassionate release.”); *see also, e.g., United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020) (“The substantive aspects of the Sentencing Commission’s analysis in § 1B1.13 and its Application Notes provide a working definition of

States v. Bryant, 996 F.3d 1243, 1248 (11th Cir. 2021) (holding that U.S.S.G. § 1B1.13 is an applicable, binding policy statement for all Section 3582(c)(1)(A) motions).

‘extraordinary and compelling reasons’; a judge who strikes off on a different path risks an appellate holding that judicial discretion has been abused.”). Using the policy statement as guidance when considering prisoner-filed compassionate-release motions is warranted for several reasons.

First, whether a compassionate-release motion is filed by the BOP or a defendant, the statutory standard governing the motion is the same. Section 3582(c)(1)(A) provides that its requirements for obtaining a sentence reduction apply “upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant.” 18 U.S.C. § 3582(c)(1)(A). And as noted above, the First Step Act did not change Section 3582(c)(1)(A)’s substantive requirements. Thus, a policy statement defining “extraordinary and compelling reasons” in the context of BOP-filed motions necessarily informs what “extraordinary and compelling” means in the context of defendant-filed motions because the same standard governs both motions. In other words, Section 3582(c)(1)(A)(i)’s “extraordinary and compelling reasons” phrase does not implicate shifting substantive meanings depending on who invokes the statute.

Congress’s application of a single standard to govern Section 3582(c)(1)(A) motions—whether filed by the BOP or by defendants—is also evident in Section 3582(c)(1)(A)’s exhaustion requirement. Before a prisoner can file a compassionate-release motion, he must first present his case to the BOP and request that the BOP file the motion on his behalf. *See* 18 U.S.C. § 3582(c)(1)(A). Fulfilling this exhaustion requirement would be a nonsensical exercise if the standard

governing the defendant's entitlement to release varied significantly depending on whether the BOP grants the defendant's request. Defendants would request compassionate release based on the interpretation of "extraordinary and compelling reasons" applicable to their motions while the BOP would evaluate such requests based on the interpretation applicable to its motions. The fact that defendants must first ask the BOP to file their compassionate-release motions before doing it themselves indicates that Congress intended no significant substantive distinction between BOP-filed and defendant-filed motions under Section 3582(c)(1)(A).

Using U.S.S.G. § 1B1.13 and its commentary as guidance to determine what is extraordinary and compelling in defendant-filed motions is further warranted by Congress's mandate that the Sentencing Commission, rather than courts, determine what constitute "extraordinary and compelling reasons" warranting a sentence reduction under Section 3582(c)(1)(A)(i). *See* 28 U.S.C. § 994(t) (directing the Sentencing Commission to issue policy statements describing what constitute extraordinary and compelling reasons under Section 3582(c)(1)(A)); *Garcia*, 655 F.3d at 435 (concluding that Congress intended the Sentencing Commission's policy statements to be binding on courts in Section 3582(c) proceedings). To be sure, the Fifth Circuit has held that there is no binding policy statement because the Sentencing Commission has yet to amend its guidelines to account for the fact that defendants can now file compassionate-release motions. *See Shkambi*, 993 F.3d at 392. But Section 1B1.13 and its commentary still provide substantial insight into what the Sentencing Commission considers to be an "extraordinary and compelling

reason” because the statutory standard the Sentencing Commission was applying when it promulgated Section 1B1.13 has not changed.

Nor does Section 1B1.13 become useless as guidance for defendant-filed compassionate-release motions simply because its terms state that it applies to motions brought by the Director of the BOP. Section 1B1.13 and its accompanying application notes “provide a working definition of ‘extraordinary and compelling reasons’”—the standard that applies equally to BOP motions and prisoner motions. *Gunn*, 980 F.3d at 1180. Indeed, when the Sentencing Commission promulgated Section 1B1.13, its intent was not to specify a unique standard for BOP motions but rather to define “extraordinary and compelling reasons” for purposes of Section 3582(c)(1)(A). 28 U.S.C. § 994(t) does not direct the Sentencing Commission to adopt standards governing prisoner motions and standards governing BOP motions. Rather, Section 994(t) directs the Sentencing Commission to “describe what should be considered extraordinary and compelling reasons for sentence reduction” under Section 3582(c)(1)(A). And as the Sentencing Commission itself has explained, U.S.S.G. § 1B1.13 and its application notes constitute the Commission’s implementation of Section 994(t)’s directive. *See* U.S.S.G. § 1B1.13 cmt. background (“This policy statement implements 28 U.S.C. § 994(a)(2) and (t).”). Because Section 3582(c)(1)(A) governs BOP motions and prisoner motions alike, the Sentencing Commission’s definition of Section 3582(c)(1)(A)’s terms is instructive when considering a prisoner’s motion brought under Section 3582(c)(1)(A)(i).

For these reasons, the Court concludes that the “extraordinary and compelling reasons” applicable to defendant-filed motions are those that are similar in kind and scope to those listed in U.S.S.G. § 1B1.13’s application notes. Therefore, any proffered “extraordinary and compelling reason” that is not contained in the Sentencing Commission’s policy statement should nonetheless be similar to those reasons in order to warrant release under the statute. In this sense, the Court’s analysis of whether Wooten has presented “extraordinary and compelling reasons” warranting the sentence reduction he seeks will be significantly guided, though not strictly bound, by the Sentencing Commission’s description in U.S.S.G. § 1B1.13 and the accompanying application notes.

C. Wooten’s Motion

Wooten’s motion must be denied because he has failed to present “extraordinary and compelling reasons” within the meaning of Section 3582(c)(1)(A)(i). Wooten argues that compassionate release is appropriate because his age and his medical history—including asthma in the form of post COVID-19 wheezing, hypertension, prostate problems, and a high BMI—place him at a higher risk of medical complications given the COVID-19 public-health crisis. He further argues that due to his obesity, the COVID vaccine—which he has received—may be less effective for him. Additionally, Wooten argues that his post-conviction rehabilitation justifies his release, as does the change in law regarding what constitutes a career offender, which he argues would result in him being sentenced to a significantly shorter sentence if sentenced today.

As an initial matter, Wooten's compassionate-release motion may be considered only if he first meets Section 3582(c)(1)(A)'s exhaustion requirement. The statute provides that a court may not consider any modification to a defendant's sentence under Section 3582(c)(1)(A)(i) unless a motion for such a modification is properly made by the Director of the BOP or by a defendant who has fully exhausted his or her administrative remedies. 18 U.S.C. § 3582(c)(1)(A). The Government does not dispute that Wooten has met the exhaustion requirement. As explained in the Government's response (Dkt. #547), Wooten's ex-wife submitted a request to Wooten's warden "based on Wooten's age and the conditions at his institution in light of the pandemic. She also claims that he was wrongly convicted of a non-violent crime and that he needs to be home with his family." (Dkt. #547 at 2). The warden denied this request. (Dkt. #547 at 2).

Wooten has presented no evidence regarding the exhaustion requirement and instead relies on the Government's summary of his prior request to the warden. As relevant here, relying on the Government's description, the request to the warden only included arguments regarding COVID-19, Wooten's medical conditions, and his age. While the request contained arguments that he was "wrongly convicted of a non-violent crime," it does not appear to contain the arguments Wooten now attempts to raise about either (i) the change in law regarding the definition of career criminal or (ii) his rehabilitation. As this Court has previously stated, "[i]n order to exhaust [his] administrative remedies, a prisoner must first present to the BOP the *same grounds warranting release* that the prisoner urges in [his] motion." *United States v. Dodd*,

No. 4:13-CR-182-SDJ, 2020 WL 7396527, at *2 (E.D. Tex. Dec. 17, 2020) (emphasis added). Therefore, the Court will not consider these new reasons because Wooten has not satisfied the exhaustion requirement with respect to these arguments.²

Turning to the applicable law, as explained above, the Court first looks to the Sentencing Commission’s definition of “extraordinary and compelling reasons” contained in U.S.S.G. § 1B1.13 and its application notes. The first category of “extraordinary and compelling reasons” identified by the Sentencing Commission consist of circumstances arising from certain medical conditions. Section 1B1.13’s application note 1 provides the following two circumstances under which a defendant’s medical condition may warrant a sentence reduction:

(i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

(I) suffering from a serious physical or medical condition,

(II) suffering from a serious functional or cognitive impairment,
or

(III) experiencing deteriorating physical or mental health because
of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

² Even if the Court were to consider these additional bases for reduction in sentence, neither would constitute an “extraordinary and compelling reason” within the meaning of the statute. First, Wooten’s argument that he would no longer be a career criminal if sentenced today is unavailing because, even if true, it would not provide an “extraordinary and compelling reason” to reduce his sentence because his sentence was lawful when imposed and any changes that may have occurred in the law were not applied retroactively. *See United States v. Terry*, No. CR 92-119, 2021 WL 4060463, at *3 (E.D. Pa. Sept. 7, 2021). Second, Wooten’s rehabilitation, without more, cannot be considered an extraordinary reason justifying reduction in his sentence. *See* 28 U.S.C. § 994(t).

U.S.S.G. § 1B1.13 cmt. n.1(A). Wooten maintains that his medical conditions, as described above, place him at a high risk of catching COVID-19 again, having worse symptoms, and dying from the infection and therefore constitute an extraordinary and compelling reason justifying a reduction in his sentence. However, this argument does not comport with the plain text of application note 1 to U.S.S.G. § 1B1.13. Specifically, the defendant must be presently suffering from a serious medical condition and such condition must presently diminish the defendant's capacity to engage in self-care in the environment of a correctional facility. Wooten has failed to argue that these medical conditions are rendering him unable to engage in self-care. Instead, Wooten is concerned that his current medical conditions could make him more susceptible to developing a serious medical condition in the future.

Accordingly, Wooten's concerns about the risks of COVID-19 given his medical conditions do not fall within the "extraordinary and compelling reasons" enumerated by the Sentencing Commission in its commentary to U.S.S.G. § 1B1.13.

Because the Fifth Circuit has held that the Sentencing Commission's definition of "extraordinary and compelling reasons" governs Section 3582(c)(1)(A)(i) motions only when such motions are filed by the BOP, Wooten's failure to show that his circumstances fall within those described by the Sentencing Commission is not fatal to his motion. However, as discussed above, the Court still looks to the Sentencing Commission's definition of "extraordinary and compelling reasons" as significant guidance in construing that phrase as to defendant-filed motions. *See Thompson*, 984 F.3d at 433 (noting that the Sentencing Commission's commentary "informs [the]

analysis” as to what constitute “extraordinary and compelling reasons” for defendant-filed compassionate-release motions). Accordingly, Wooten’s allegedly “extraordinary and compelling reasons” should be similar in kind to those enumerated by the Sentencing Commission.

The reasons Wooten asserts as a basis for his release are unlike any of the reasons enumerated by the Sentencing Commissions in its commentary to U.S.S.G. § 1B1.13. The circumstances in application note 1 all include significant hardships that are *presently* affecting the defendant, including where a medical condition or the aging process is presently causing the significant health problems or where the defendant has minor children or an incapacitated spouse who are presently left without a caregiver as a result of the defendant’s incarceration. By contrast, Wooten argues that he should be released because his medical conditions coupled with his incarceration increase his risk of contracting COVID-19 again and developing severe complications from COVID-19.


Wooten’s motion does not identify any specific, significant hardship that he presently faces; rather, the motion raises only the concern that Wooten is at risk for developing a significant hardship in the future. As the Government notes in its response, Wooten is currently classified as “Care Level 1 healthy or simple chronic care.” (Dkt. #547 at 3). There is no analogous provision in Section 1B1.13 or its commentary where the increased *risk* of hardship caused by incarceration is considered an “extraordinary and compelling reason” as that phrase is used in 18 U.S.C. § 3582(c)(1)(A)(i).

Wooten has therefore failed to present an “extraordinary and compelling reason” within the meaning of Section 3582(c)(1)(A)(i). Because Section 3582(c)(1)(a)(i) authorizes sentence reductions only for “extraordinary and compelling reasons” within the meaning of the statute, Wooten’s motion must be denied.³

III. CONCLUSION

For the foregoing reasons, it is **ORDERED** that Gerald Wooten’s Motion for Release to Detention Based on the COVID-19 Pandemic, (Dkt. #530), is hereby **DENIED**.

So ORDERED and SIGNED this 11th day of March, 2022.


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE

³ To the extent Wooten also requests, in the alternative, that the Court order him released to home confinement, such request must also be denied. The BOP has exclusive authority to determine where a prisoner is housed; thus, the Court is without authority to order home confinement. 18 U.S.C. § 3621(b); *see also United States v. Miller*, No. 2:17-CR-015-D (02), 2020 WL 2514887, at *1 (N.D. Tex. May 15, 2020) (“[N]either the CARES Act nor the First Step Act authorizes the court to release an inmate to home confinement.”); *Zheng Yi Xiao v. La Tuna Fed. Corr. Inst.*, No. 3:19-CV-97, 2019 WL 1472889, at *3 (W.D. Tex. Apr. 3, 2019) (“The Attorney General—and by delegation the BOP—has the exclusive authority and discretion to designate the place of an inmate’s confinement.” (citing *Moore v. U.S. Att’y. Gen.*, 473 F.2d 1375, 1376 (5th Cir. 1973) (per curiam); *Ledesma v. United States*, 445 F.2d 1323, 1324 (5th Cir. 1971) (per curiam))).